

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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3M Company,	)	File No. 20-cv-1314
	)	(SRN/DTS)
Plaintiff,	)	
vs.	)	Saint Paul, Minnesota
	)	September 9, 2020
Matthew Starsiak, et al,	)	3:00 p.m.
	)	
Defendants.	)	HEARING CONDUCTED VIA
	)	ZOOM FOR GOVERNMENT

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BEFORE THE HONORABLE SUSAN RICHARD NELSON  
UNITED STATES DISTRICT COURT JUDGE  
**(MOTIONS HEARING)**

APPEARANCES

For the Plaintiff:	FAEGRE DRINKER BIDDLE & REATH JOHN W. URSU, ESQ. KERRY L. BUNDY, ESQ. JOSEPH M. PRICE, ESQ. PETER W. BALDWIN, ESQ. 90 South Seventh Street Suite 2200 Minneapolis, Minnesota 55402-3901
For the Defendants:	MEAGHER & GEER, PLLP TIMOTHY R. SCHUPP, ESQ. ROBERT WILLIAM VACCARO, ESQ. 33 South Sixth Street Suite 4400 Minneapolis, Minnesota 55402
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**P R O C E E D I N G S**  
**VIA ZOOM FOR GOVERNMENT**

THE COURT: Good afternoon, counsel. All right. We are here today in the matter of 3M Company versus Matthew Starsiak, et al. This is civil file number 20-1314. Let's begin by having counsel note your appearances and we'll begin with the plaintiffs, please.

MR. URSU: Sure. This is John Ursu of Faegre Drinker Biddle & Reath for Plaintiff 3M Company.

THE COURT: Good afternoon.

MR. URSU: Good afternoon, Your Honor.

(Crosstalk)

THE COURT: All right, Ms. Bundy, go ahead.

MR. SCHUPP: I'm sorry.

MS. BUNDY: Thank you. I was just going to add Kerry Bundy also with Mr. Ursu.

THE COURT: Very good.

MR. PRICE: Joe Price, Your Honor. Good to see you again.

THE COURT: Nice to see you, Mr. Price.

MR. BALDWIN: And good afternoon, Your Honor. Peter Baldwin also with Mr. Ursu on behalf of 3M.

THE COURT: Very good. Anybody else on the call for the plaintiff? All right.

1 And then for the defense, please.

2 MR. SCHUPP: Good afternoon, Your Honor. Sorry  
3 for jumping in early. Tim Schupp on behalf of Mr. Starsiak  
4 and AMK, and Rob Vaccaro is in the room here, although not  
5 on the camera.

6 THE COURT: All right. Very good.

7 We are here today to consider two motions. The  
8 motion to dismiss for lack of jurisdiction and motion for a  
9 preliminary injunction. I think it makes most sense to  
10 begin with the motion to dismiss. Mr. Schupp, Mr. Vaccaro,  
11 whoever wishes to be heard.

12 MR. SCHUPP: Thank you, Your Honor. May it please  
13 the Court, counsel:

14 Excuse my kind of angle on the Zoom, Your Honor,  
15 but we had a blind that's broken in here and if we do it  
16 straight at the camera it kind of is too glaring, so I've  
17 got the camera set up kind of sideways and I apologize for  
18 that.

19 THE COURT: I can see and hear you very clearly.

20 MR. SCHUPP: Okay. Thank you.

21 In late April 2020, as the Court knows,  
22 Mr. Starsiak, through his company AMK, was asked whether he  
23 could help locate or source 3M masks for some government  
24 entities and others that were needed due to the pandemic.  
25 AMK got involved as a facilitator or a broker's

1 representative and never sought to buy or sell any products  
2 on its own behalf.

3 AMK went to 3M on two occasions for information  
4 and assistance, which 3M did not provide either time. After  
5 the second occasion, 3M representative Haley Schaffer told  
6 AMK that, quote, I suggest you continue your discussions  
7 with FEMA as they would be in a position to prioritize your  
8 request, which is what AMK did and then was sued by 3M for  
9 doing so.

10 3M alleges in paragraph 4 of their complaint that,  
11 quote, Defendants did walk away from their discussions with  
12 3M with something they could use: the names of 3M lawyers  
13 they communicated with.

14 Now, the notion that Mr. Starsiak burrowed into  
15 3M, as they said in their brief, to obtain names is frankly  
16 ridiculous. I did a Google search this morning and I input  
17 3M Company's general counsel, and the first page I got ten  
18 listings for Ivan Fong, and that's just on the first page,  
19 including his LinkedIn address and a Wikipedia page about  
20 him that includes his photograph. And then there's also  
21 many prominent public mentions in SEC filings and the like  
22 relating to the 3M Company that talks about Ivan Fong. So  
23 this information is readily and easily available in the  
24 public and to ascribe nefarious motives other than exactly  
25 what Mr. Starsiak said he was contacting them for really

1 doesn't have any factual or common-sense approach.

2 THE COURT: But, Mr. Schupp, that isn't the  
3 question before the Court right now. I mean, for now I will  
4 take the facts of the complaint as true, and the real  
5 question is whether there's been a *prima facie* showing under  
6 the *Calder* effects test. So let's focus on that.

7 MR. SCHUPP: Well, okay, Your Honor. I want to  
8 first comment on exactly what it is that we have for  
9 contacts with Minnesota aside from the *Calder* effects test,  
10 and what we have is basically some e-mails, two telephone  
11 calls on May 11th with Haley Schaffer and others, and a  
12 voicemail message that was left with Mr. Motalebi when  
13 Mr. Starsiak called him to try to get the names of 3M  
14 distributors where he could purchase masks.

15 So turning to 3M's claim for specific personal  
16 jurisdiction, it's the *Calder* case, and that's a 1984 case,  
17 which was a libel case against the *National Enquirer*. The  
18 authors were in Florida and the target of the libelous  
19 article lived in California. *National Enquirer* had a  
20 circulation of 600,000 in California, according to the  
21 opinion. And under those circumstances where the author  
22 sourced material out of California, had the article  
23 published in California and the people lived in California,  
24 the Court found personal jurisdiction in that instance. But  
25 the Court should keep in mind, and I think the Court's

1 cognizant of the fact, that the *Calder* test is narrowly  
2 construed and not broadly construed.

3 And I think if we turn to the *Walden versus Fiore*  
4 case, which is a 2014 Supreme Court case we cited, I think  
5 it's helpful in looking at the narrow effect of *Calder*. And  
6 if the Court sees at page 289, relying on *Calder*,  
7 respondents emphasized that they suffered the, quote, injury  
8 caused by petitioner's allegedly tortious conduct; i.e., the  
9 delayed return of their gambling funds.

10 What happened was these people were travelling  
11 from North Carolina to Nevada and their gambling funds were  
12 retained by the authorities. It was later returned to them,  
13 and they then brought an action against the authorities who  
14 had retained their money in Nevada, and the Court held that  
15 there was no personal jurisdiction in Nevada under those  
16 circumstances.

17 In any event, going back to the case, relying on  
18 *Calder*, respondent emphasized that they suffered the injury  
19 caused by petitioner's allegedly tortious conduct; i.e., the  
20 delayed return of their gambling funds while they were  
21 residents in the forum. *Calder* made clear that mere injury  
22 to a forum resident is not a sufficient connection to the  
23 forum. The proper question is not where the plaintiff  
24 experienced a particular injury or effect, but whether the  
25 defendant's conduct connects them to the forum in a

1 meaningful way.

2 And that's what's lacking in this particular case,  
3 Your Honor, is the connection between their cause of action  
4 and the forum state.

5 And before I discuss that connection, I just want  
6 to bring to the Court's attention the *Bristol Myers Squibb*  
7 case, which is a 2017 Supreme Court case, where the court  
8 noted that specific jurisdiction is very different in  
9 comparison to general jurisdiction. In order for a state  
10 court to exercise specific jurisdiction, the suit must arise  
11 out of, or relate to, the defendant's contacts with the  
12 forum. In other words, there must be an affiliation between  
13 the forum and the underlying controversy, principally an  
14 activity or an occurrence that takes place in the forum  
15 state and is therefore subject to the state's regulation.  
16 So as we pointed out in our --

17 THE COURT: Mr. Schupp, as you're aware -- I'm  
18 sorry about this format. It always feels like I'm  
19 interrupting people, so I apologize for that.

20 MR. SCHUPP: That's okay, Your Honor. No worries.

21 THE COURT: I've had occasion recently to take a  
22 hard look at this whole question in the *Travel Leaders* case.  
23 How do you distinguish the analysis I engaged in in that  
24 case from this case?

25 MR. SCHUPP: Since I'm not familiar with that

1 case, I can't tell you, Judge.

2 THE COURT: All right. That's fine. Go ahead.

3 MR. SCHUPP: Well, anyway, what I was going to say  
4 is the colorable claim in this case that's been articulated  
5 is one of false affiliation that occurred with Star Brands  
6 in New York. And the way that 3M ties that to the  
7 jurisdiction is found at page 34 of their opposition where  
8 they say as a matter of law in the Eighth Circuit, a party  
9 whose trademark are infringed is harmed in its principal  
10 place of business, and then cites the *Pangaea* and *Dakota*  
11 *Industries* case, *Inc.*; and I would challenge that assertion,  
12 Your Honor, as not being accurate at all, especially based  
13 on the *Pangaea* and the *Dakota Industries* case.

14 The *Pangaea* case involved the Flying Burrito  
15 Company in Arkansas who brought an infringement action  
16 against a company in Ames, Iowa who had the identical name.  
17 Representatives from that Iowa company had travelled down to  
18 Arkansas one time to talk about the issue, and then they  
19 were sued by *Pangaea* in District Court down in Arkansas, and  
20 the Eighth Circuit upheld dismissal for lack of personal  
21 jurisdiction, even though the alleged trademark infringement  
22 occurred in Arkansas. The Court found that the single  
23 contact with the forum state and the fact that *Pangaea* was  
24 located in Arkansas was insufficient to exercise personal  
25 jurisdiction, which I would submit is exactly what we have



1 in this case.

2 We have a claim of false affiliation that occurred  
3 in New York that they are trying to tie to Minnesota through  
4 the conversations with the lawyers, and a couple of phone  
5 calls and a number of e-mails which the courts in the cases  
6 have always held is insufficient, in and of themselves, to  
7 confer personal jurisdiction.

8 Then the Dakota Sportswear Company or *Dakota*  
9 *Industries* case -- so *Pangaea* doesn't stand for the  
10 proposition that as that matter of law the trademark is  
11 infringed, they were harmed in the principal place of  
12 business, because the Court declined jurisdiction.

13 In *Dakota Industries* the court said in trademark  
14 infringement actions two circuits have stated that the claim  
15 arises at the place of the passing off, which is where the  
16 deceived customer buys the defendant's product in the belief  
17 he's buying the plaintiff's. So in this case it wouldn't be  
18 passing off. It would be false affiliation. And the false  
19 affiliation, of course, occurred in New York, not in  
20 Minnesota.

21 The Court did go on to say that there was a  
22 District Court in Illinois that found infringement of a  
23 patent trademark or copyright takes place where the owner  
24 suffers the damage, but that appears to be the minority  
25 view. And the Court said, We need not decide this issue

1 because in this case some of the sportswear garments were  
2 passed off in the forum state and Dakota Industries has its  
3 principal place of business in the forum state.

4 So *Dakota Industries* absolutely does not stand for  
5 the proposition that as a matter of law in the Eighth  
6 Circuit a party's whose trademark is infringed or harmed in  
7 its principal place of business, the court simply did not  
8 hold that and notes that the majority view is that the  
9 infringement action takes place as the passing off, or in  
10 this case the alleged false affiliation. So I would submit  
11 under their own authority that they cite and the facts as  
12 they have laid them out that they haven't shown a prima  
13 facie case and the jurisdiction is lacking in this case and  
14 we respectfully request a dismissal, Your Honor.

15 THE COURT: Thank you, Mr. Schupp.

16 Mr. Ursu.

17 MR. URSU: Ms. Bundy will handle this part of the  
18 argument for us.

19 THE COURT: Okay. Very good. Sorry.

20 Ms. Bundy.

21 MS. BUNDY: No problem. Thank you, Your Honor.

22 So this is a case where defendants specifically  
23 targeted 3M by reaching out under false pretenses to get  
24 information about 3M's Minnesota-based lawyers and 3M's  
25 Minnesota-based procurement process for N95 masks. They

1 then used that exact information to falsely affiliate  
2 themselves with 3M to potential purchasers such as Star  
3 Brands. That's a violation of the Lanham Act.

4 And these are the facts that existed at the time  
5 of the TRO, and in your TRO order the Court found that  
6 sufficient for establishing a prima facie case for  
7 jurisdiction. Those facts haven't changed, the standard  
8 hasn't changed, and the result shouldn't change.

9 If we look -- because it's an intentional tort we  
10 will be looking at, as the Court knows, the two tests.

11 THE COURT REPORTER: I'm sorry. I'm sorry to  
12 interrupt but, Mr. Schupp, could I please have you mute?

13 THE COURT: Mr. Schupp, you need to put yourself  
14 on mute, please.

15 MR. SCHUPP: Say again?

16 THE COURT: Wait. Hold on. He's not on mute yet.  
17 Maybe he is. It's not appearing as muted.

18 Okay. Go ahead, Ms. Bundy. Sorry.

19 MS. BUNDY: Sure. So the facts under the  
20 five-point test are easily met here. Let's look first at  
21 the nature and the quality of the context. There are  
22 meaningful contexts here of specific targeting. Starsiak  
23 wrote e-mails that he knew and authorized his lawyer to send  
24 to 3M. His lawyer contacts. Those e-mails included  
25 misrepresentations.

1           For instance, in docket 14 at 1, Mr. Fong's  
2       exhibit, it shows the e-mail that he wrote knowing that it  
3       would be entered and given to Mr. Fong. It said that a  
4       group had been getting the runaround with 3M escrow  
5       attorneys. There are no escrow attorneys, as Ms. Schaffer  
6       set forth in her declaration at paragraph 11.

7           Additionally, Mr. Starsiak mentions to 3M that he  
8       uses a Dentons attorney, but he needed someone better this  
9       time. But again we've learned, at Schaffer declaration  
10      paragraph 13, that Dentons doesn't represent defendants.

11          And finally he mentioned that he was trying to  
12      purchase 100 billion masks, but as we've seen in the record  
13      there aren't 100 billion masks.

14          These communications not only were fraudulent but  
15      they were direct communications that went with the forum  
16      state with 3M, lawyers including at the highest level with  
17      the general counsel.

18          We also heard Mr. Schupp talk about there were  
19      additional context that we've learned through limited  
20      discovery of talking to Mr. Motalebi. We've heard that  
21      during the same discussion or during the discussion that  
22      Ms. Schaffer had with Mr. Starsiak and the defendants that  
23      misrepresentations similar to those found in his e-mail that  
24      was targeted to us were made.

25          Mr. Starsiak and his company were doing this for

1 two reasons. They were inducing, attempting to induce  
2 commercial activity in the forum. He wanted to be able to  
3 buy masks to sell to others and make the representation that  
4 he was working with 3M. Additionally, he wanted to get  
5 contacts and information to perpetuate his scheme.

6 He, again, represented that he represented the  
7 Gates Foundation or had an affiliation with them; and again,  
8 the Gates Foundation has denied any affiliation. So these  
9 fraudulent contacts were not only meaningful, they were  
10 persistent, looking at the second factor.

11 I think it's pretty much uncontested based on what  
12 I've seen in the reply brief that there were approximately  
13 30 contacts between 3M and Starsiak within a roughly  
14 six-week period between April 23rd and June 4th. Some of  
15 these contacts were multiple -- by defendants were multiple  
16 times a day.

17 Now, defendants argue that we can't use these  
18 facts to support jurisdiction because there's just no  
19 connection between this fraudulent conduct and the cause of  
20 action and that's just purely wrong. The claim here is  
21 trademark infringement for false affiliation. The contacts  
22 are directly related to that cause of action. Mr. Starsiak  
23 is falsely suggesting to the public that he is affiliated  
24 with 3M and in order for that claim by him to be plausible,  
25 it has to sound legitimate. He has to credibly pass himself

1 off as speaking for 3M or being a 3M distributor, and the  
2 core contacts that we just discussed gave him the tools to  
3 be able to do that. And that's why that's so dangerous here  
4 and why it's so harmful to 3M.

5 This is not a case where he's just out there  
6 saying he represents 3M or is a 3M distributor. He is  
7 making specific representations about information he learned  
8 and people he knew in order to plausibly pass himself off as  
9 an affiliate of 3M.

10 We see this in Matt Hise's declaration that the  
11 Court has previously referenced. We see that with respect  
12 to the five phone calls that were made. And Mr. Hise's  
13 declaration, by the way, an individual who was not deposed  
14 in this case and therefore his -- and therefore his  
15 testimony remains unrebutted, repeatedly said that he was  
16 told that he was the number -- that defendant was the number  
17 one sales team. That he was an authorized distributor.

18 In the fraud report that Mr. Hise submitted to 3M,  
19 at docket entry 16-1, Exhibit 1 to his declaration, you see  
20 Mr. Hise memorializing what AMK told him about 3M's  
21 processes. Details about the client providing lot  
22 information or LOI to AMK. AMK would then be providing that  
23 LOI to the 3M team. AMK's lawyers would then be talking to  
24 3M's lawyers and 3M would provide AMK a production timeline.

25 You see him saying in the transcribed discussion

1       that he talked to Mr. Fong and talked to Ms. Schaffer. In  
2       fact, he gives details that he wasn't talking exclusively to  
3       Mr. Fong because Mr. Fong was in board meetings and  
4       therefore that's why he brought in Ms. Schaffer. This is  
5       specific, intimate information that allows someone to be  
6       different and stand out from the other fraud perpetrators  
7       out there by showing specific facts that lead him to -- lead  
8       him to deceive the public into believing that he is  
9       affiliated with them.

10               With respect to these comments in the brief,  
11       defendants state, Well, if there's 30 conducts [sic], some  
12       of the comments made by my client cannot be considered false  
13       affiliation because they have regular contacts. As we just  
14       discussed, there were a lot of other contacts and conduct  
15       that Mr. Starsiak said. However, that particular statement  
16       is taken out of context. If you look at the transcript, you  
17       can see that in that transcript Star Brands is challenging  
18       Mr. Starsiak's affiliation. He's asking them tell us how  
19       you are a legitimate distributor and Starsiak is bragging  
20       that he's in regular contact to prove the affiliation. What  
21       he doesn't say is that the majority of those contacts are  
22       him mining for information.

23               Since limited jurisdictional discovery occurred,  
24       there are a few other items I want to bring to the Court's  
25       attention to that support the direct relationship between

1 this fraudulent activity, on the one hand, of mining for  
2 certain affiliates and contacts information in Minnesota,  
3 with his false affiliation claims to the public.

4 Exhibit 28 to my declaration, Mr. Starsiak and the  
5 defendants are talking about his connections with another  
6 group of individuals and he's saying how he was doing a deal  
7 with the Gates Foundation, which we know isn't true, and how  
8 he, quote, went out of his way to get two 3M attorneys on  
9 the phone. That is not random and fortuitous. That is  
10 intentional.

11 Exhibit 25 shows Mr. Starsiak along with  
12 Mr. Schuster, his lawyer friend, perpetuating the fraud in  
13 mid-May of 2020 by telling a third party that Starsiak has  
14 production contracts with 3 million [sic] to produce 1  
15 billion a week of masks, again claiming another instance of  
16 claiming a false affiliation.

17 Exhibit 26 again, Mr. Starsiak talking to a  
18 different customer, not Star Brands, about the 3M process  
19 for purchasing masks.

20 And finally, and this one is really critical,  
21 especially given the procedural posture that we're at right  
22 now, it's found in the affidavit at Exhibit 27. These  
23 documents include a Notice of Broker directly addressed to  
24 Dorsey & Whitney in Minnesota. Mr. Starsiak and AMK is  
25 representing that he was a broker for the sale of 3M



1 respirators. He's passing along a copy to someone else.

2 Now, defendants claim there's no evidence that  
3 this was sent to Dorsey & Whitney, but curiously in the  
4 reply brief they also don't say it was ever sent. And given  
5 the procedural posture here, if there is a factual dispute,  
6 as the Court knows we must look at the facts most favorable  
7 to 3M and resolve all conflicts in its favor. And based on  
8 that document alone, we're seeing a reach out to 3M -- to  
9 someone other than 3M in Minnesota where he is falsely  
10 affiliating himself with 3M.

11 Now, through this lens we think that the facts  
12 easily establish specific jurisdiction to be consistent with  
13 the notions of fair play and substantial justice. Factors  
14 four and five don't appear by defendants to be at issue, but  
15 I do want to focus just on factor four for one minute  
16 because I think it really is at the heart of not only my  
17 motion but our motion for preliminary injunction, and that's  
18 that Minnesota has an interest in protecting its residents  
19 from fraudulent practices like we have here.

20 As we all know, we're in a time of pandemic and as  
21 recently as this week there are news outlets, including the  
22 *StarTribune*, that are reporting that N95 masks are in short  
23 supply in Minnesota hospitals and across the country and  
24 they are being rationed and nurses feel unsafe. And that  
25 the result of this is potentially, because of outward

1 effects of the gray market, including the market in which  
2 defendants were playing, and the Court has the power here to  
3 stop it.

4 So now let's turn to the effects test. The  
5 effects test merely bolsters the conclusion that the  
6 defendants are subject to personal jurisdiction. This is an  
7 instance where we have conduct that is expressly and  
8 uniquely aimed at the forum state. We've talked about the  
9 cluster of activities with respect to trying to procure  
10 masks here, talking to 3M employees, sending a communication  
11 to Dorsey & Whitney. These and the falsity of those  
12 representations, these alone meet the standard of uniquely  
13 or expressly aimed at the forum state.

14 You could look at the *Oriental Trading* case that  
15 we cite, as well as the *Finley* case we cite, which talk  
16 about courts upholding a denial of a motion to dismiss and  
17 exercising personal jurisdiction where fraudulent  
18 communications are directed either at forum residents within  
19 the forum.

20 Now, Mr. Schupp cites the *Walden v. Fiore* case.  
21 Granted, that's a Supreme Court case, but it's also  
22 completely different from the facts here. It's true that  
23 *Walden* narrows the *Calder* effects test, but the facts in  
24 that case are very different. The facts in that case  
25 involve an out-of-state defendant who is being sued by a

1 Nevada resident for contacts that Nevada resident had while  
2 in Georgia. So the only -- in that case the only contact  
3 with Nevada was the fact that the allegedly bad acts  
4 occurred in Georgia with a Nevada resident. And that is  
5 clearly not what we have here. Instead, as we've stalked  
6 about, we have all of the purposeful targeting into the  
7 forum state.

8 I think that the *Whaley* case in the Eighth Circuit  
9 that was recently decided, as well as the *Travel Leaders*  
10 case that the Court has recently did, talk about and are  
11 very analogous to the intentional and unique nature of the  
12 contacts and are good support for finding jurisdiction here  
13 under the *Calder* test.

14 The last part I'd say is I would just talk briefly  
15 about the harm. Defendants want you to believe that there  
16 is no harm here because there's no consummated sale. But  
17 the statute and the Lanham Act is clear that a violation can  
18 occur when an offer for sale or distribution is made. And  
19 that's at 15 U.S.C. 1114, subdivision 1.

20 They cite to the *Cortec* case. But again, the  
21 *Cortec* case is a different case than this case. The *Cortec*  
22 case is your garden-variety product counterfeit case where  
23 there was no showing made of any nature, quality, or  
24 quantity activities occurring in the forum state. Rather,  
25 they were merely selling infringing product and none of that

1 occurred in the forum state. Again, not our case. Here  
2 it's a false affiliation that was made and was credible  
3 based specifically on the false contacts and  
4 misrepresentations that occurred in Minnesota.

5 Additionally, the harm in a trademark case is not  
6 limited to diverted sales. As I'm sure the Court knows,  
7 cases in trademark infringement looking at preliminary  
8 injunction context always talk about harm and harm is not  
9 just to the consumer, it's to the trademark owner. And we  
10 cited the *Buffalo Wild Wings* case versus *Grand Cayman Equity*  
11 from the District of Minnesota (2011) on that point.

12 The harm relating to false affiliation relates to  
13 the harm to 3M goodwill and favorable reputation, and that  
14 is harm that is affiliated with conduct and activities that  
15 are not up to 3M standards like we see here.

16 There is proof again in the record that Starsiak  
17 knew that the harm would occur here. He had numerous  
18 documents in his possession that he produced during limited  
19 discovery that show him addressing purchase orders to 3M and  
20 3M general counsel using Minnesota's address. That's  
21 Exhibit 15 of my declaration, as well as Exhibit 29.

22 Additionally, there is proof in the record, based  
23 on the multiple e-mails, that he knew Ms. Schaffer who he  
24 was talking to was located in Minnesota based on her  
25 signature block.

1           Now, Mr. Schupp wants to talk to us about the  
2     *Dakota Industries* case and the fact that perhaps we were a  
3     little, I think he said, charitable with the way in which we  
4     characterized this, and here is what I would say. The  
5     Eighth Circuit in the *Dakota Industries* case said there are  
6     two ways that you can look at where harm is felt. One might  
7     be where the alleged infringing activity occurred and the  
8     passing off occurred, but that's not what we have here. The  
9     other is where the economic injury occurred. And what we're  
10    saying is that looking at the *Dakota Industries* case, the  
11    Eighth Circuit says that the economic injury is felt at the  
12    principal place of business, which is here in Minnesota.

13           But again, this is not a case merely about where  
14    harm is felt. It is about targeting 3M within the State of  
15    Minnesota, making false statements to obtain information and  
16    identities, and then using that information to 3M's  
17    detriment. We believe that exercising jurisdiction under  
18    these facts is consistent with the notions of fair play and  
19    substantial justice. Thank you.

20           THE COURT: Mr. Schupp.

21           MR. SCHUPP: Thank you, Your Honor.

22           I understand the Court has to accept the facts as  
23    alleged as true, but if what they allege is not supported, I  
24    don't think the Court has to do that. So, for example, we  
25    have a situation with respect to these procedures that

1 Ms. Bundy talked about that we talked about the letter of  
2 interest, the proof of funds and the contact with the  
3 lawyer. If you look at the recording of the conversation  
4 with Haley Schaffer, none of that information was provided  
5 by 3M. What happened was after Mr. Starsiak was provided  
6 with Mr. Motalebi's name to contact to obtain the name of a  
7 3M distributor, Mr. Motalebi never called him back. So it's  
8 not a conversation that he had with Mr. Motalebi. He just  
9 left a voicemail.

10 So AMK on its own got in contact with individuals  
11 and groups who told AMK that they were affiliated with or  
12 had connections with 3M distributors. That included  
13 individuals who have been identified as Tim Dupler, Kim  
14 Shafer, Bionica, Chris Leestow and Redstone, and those are  
15 the individuals that provided the information to AMK and  
16 Mr. Starsiak about what 3M's procedures were. And you can  
17 see that in the e-mails between them that the source of the  
18 information is not from 3M but it's from these other people  
19 that represented to Mr. Starsiak that they had connections  
20 with 3M distributors. And Mr. Starsiak thought they did.  
21 He was told these people had access to lots, not in a large  
22 number, but lots of masks from FEMA.

23 Well, AMK never ultimately closed a transaction.  
24 All that information came from these other individuals who  
25 said that they have relationships with distributors and not

1 from 3M. So they can't use that, the familiarity with 3M  
2 procedures and what he's talking about, as information that  
3 he obtained from them.

4 And then I want to talk about this Exhibit 27  
5 which is this thing that has a Dorsey broker position  
6 information on it. We commented to this in our brief, but  
7 you can see from the e-mail attached from Mr. Starsiak dated  
8 May 14th that the notice of broker position was actually  
9 sent to a Mr. Holden at the Gordon Rees law firm in  
10 California. It wasn't sent to Dorsey & Whitney. And they  
11 say, Well, maybe they haven't said it wasn't.

12 Well, what we have here is a draft, and you can  
13 see it's a draft, it's not finished, and we have an e-mail  
14 showing where it was sent and it was sent to Gordon Rees.  
15 And then it was also sent to Robin Hariri (phonetic) by  
16 Mr. Starsiak, who 3M says they had no connection with, but  
17 he did.

18 So when they make all these allegations and say  
19 all these things and say that the Court has to accept them  
20 as true, the fact of the matter is they are contradicted by  
21 the documents that they use to rely on in their claim.

22 The significance of the 30 contacts was for  
23 jurisdictional purposes. They say, Look at all these  
24 contacts for Minnesota. But for false affiliation they say  
25 no, when he said he had regular contact with 3M, that's

1 false and misleading. And our proposition is this: That  
2 you can't have it both ways. You can't say for one purpose  
3 that they had numerous contacts and for another purpose when  
4 you said you had numerous contacts, you're lying about it.  
5 They can't have it both ways. That's the simple point of  
6 that.

7 So really what we have is the phone calls, the  
8 e-mails, and the voicemail message, and that's it. And the  
9 allegation of damage here, which in the *Dakota Industries*  
10 case, the Eighth Circuit did not hold that the place that  
11 the trademark infringement occurs is where the trademark  
12 holder resides. That's not a holding as represented.

13 And that's all I have, Your Honor. Thank you.

14 THE COURT: Thank you, Mr. Schupp.

15 The Court will take that motion under advisement  
16 and we'll move ahead now to the motion for a preliminary  
17 injunction; but before we do, Mr. Schupp, I have a question  
18 for you.

19 First, you can assume that I will study this  
20 carefully, but let's assume for a moment I ruled in 3M's  
21 favor on the motion to dismiss and found that they had pled  
22 a prima facie case of personal jurisdiction. Is it true  
23 that your client would contest the requested order from 3M  
24 on a preliminary injunction? It seems to me that the order  
25 really -- the heart of the order is enclosed paragraphs (a)



1 and (b) under the order portion on page 4, and 3M is asking  
2 for two things. That the Court enjoin Mr. Starsiak during  
3 the pendency of this action from using 3M marks and any  
4 other word that's -- or symbol that's confusingly similar;  
5 and secondly, that he not engage in false, misleading, or  
6 deceptive conduct in connection with 3M.

7 So again, if there is personal jurisdiction here,  
8 is Mr. Starsiak fighting that, or would he agree to the  
9 entry of that preliminary injunction?

10 MR. SCHUPP: I would have to discuss that with  
11 him, Your Honor. When I talked with 3M after the TRO and  
12 asked about whether we could resolve this, 3M said they had  
13 to do the discovery and move forward with this motion. So  
14 -- and I was a little surprised in their response that they  
15 suggested that Mr. Starsiak shouldn't have fought this, but  
16 when I raised that issue with them they insisted, so I'm a  
17 little put off by the assertion by 3M in that regard.

18 I can't tell the Court one way or the other  
19 without talking with Mr. Starsiak. I know for a fact that  
20 he would consider that to be an indictment that he had  
21 engaged in such conduct, which he vehemently denies. That's  
22 all I know about that.

23 THE COURT: Okay. Well, just to be clear, this is  
24 a preliminary injunction so the case would proceed --

25 MR. SCHUPP: I understand, Your Honor.

1           THE COURT:  -- in the interim period if he would  
2           be agreeable to these restrictions.  And it sounded during  
3           the TRO hearing like he has no intention of doing any of  
4           this.

5           MR. SCHUPP:  He's not and he has not.

6           THE COURT:  And he can continue to defend the case  
7           going forward.  The question is whether he would just simply  
8           agree to this preliminary injunction.  Well, I'll ask you,  
9           Mr. Schupp, to have that conversation with him and get back  
10          to the Court if you would.

11          MR. SCHUPP:  Certainly, Your Honor.

12          THE COURT:  All right.  In the meantime we'll  
13          entertain the motion.  Mr. Ursu.

14          MR. URSU:  Certainly, and I can speak to that as  
15          well.  I had the conversation with Mr. Schupp, and 3M would  
16          readily agree to him stipulating to a preliminary  
17          injunction.  I don't think that's at issue.

18          MR. SCHUPP:  That's not what you said before,  
19          John.

20          MR. URSU:  So you and I have different memories of  
21          that conversation, Tim.  But we did take the discovery and I  
22          think it's been very helpful in helping to establish exactly  
23          why it's important.

24          You know, ultimately the Court has already found  
25          that a TRO under Rule 65 is appropriate and it's the same

1 standard now. You know, in the end this is at the heart of  
2 what the Lanham Act protects against and there is not a  
3 serious contest that he did these things that we said that  
4 he did. And so what Rule 65 says in these circumstances is  
5 where there's harm, potential harm to the public, where the  
6 balance of harms weighs in favor of the movant, where  
7 there's a threat of irreparable harm, and where the law  
8 protects against it, and it looks like they did what they  
9 did, a preliminary injunction should issue. It's the same  
10 standard that we dealt with before.

11 And it's, if anything, the passage of time and  
12 this discovery has shown why it's so important. N95  
13 respirators are different than the surgical masks and the  
14 different kinds of masks that we wear every day. They are  
15 basically a filter, a tight-fitting filter that you put on  
16 our face; and as we all know, COVID moves through particles  
17 so the virus attaches to particles, and those particles are  
18 attached to, about 95 percent of them, to electrostatic  
19 technology which is the same kind of technology that you  
20 would find in high-end furnace filters.

21 3M can make about a billion of these a year. It's  
22 trying to up that number by one billion. It's trying to  
23 move further, and virtually all move through six  
24 distribution channels, and 3M does not permit those  
25 authorized distributors to work with brokers.

1           As you know, healthcare workers are on the front  
2     lines of this. The *StarTribune* just had a good article the  
3     other day on how about 50 percent of them feel fear and they  
4     should, because they are being forced to reuse these. It's  
5     very hard to get fresh N95 respirators, and at least  
6     according to the most recent surveys about a thousand  
7     healthcare workers have died, and certainly an important  
8     cause of that is the lack of good PPE availability.

9           The pricing of these, 3M has agreed that it's not  
10    going to change the pricing. It's about a buck 27 to buy a  
11    1860 N95 respirator. And because of that, thousands upon  
12    thousands of gray market people entered into the market  
13    thinking that if they could get their hands on respirators,  
14    they could sell them at what price the market would bear.  
15    And as we've seen, that's sometimes three, four, five times  
16    of what 3M is actually willing to sell them for, and then  
17    pocket the difference.

18           And those are the allegations in this complaint  
19    that that's what Mr. Starsiak did. That he had in his hand  
20    a letter of intent for a billion of these respirators. It  
21    would have netted him more than 2 billion dollars if he  
22    would have been able to actually fulfill the order. If he  
23    talked his way into 3M to try to see if he could get to the  
24    head of the line and then when that failed, he went out and  
25    told people that he -- that 3M had hired him to vet buyers;

1       that he was 3M's -- he was a 3M-authorized distributor and  
2       that he was part of 3M's number one sales team.

3               And I think the most telling part of these motion  
4       papers are that because there was no discovery on the merits  
5       and Matthew Hise, for instance, was not deposed, there's not  
6       a serious contest as to that. The Hise declaration states  
7       that there were four or five different discussions with  
8       between Star Brands Group and AMK. The transcript supports  
9       that, and his own contemporaneous fraud report to 3M  
10      supports it as well. And so he said there were multiple  
11      conversations and that they were posing as 3M distributors.  
12      That is what the Lanham Act protects against. The Lanham  
13      Act is designed to protect trademark holders from people  
14      running around and saying that they are associated with --  
15      with the trademark holder when they are not.

16             And in this particular case, we have the  
17      additional overlay that 3M is the major provider of N95  
18      respirators in the world; and because 3M provides the best  
19      ones, most of them, and otherwise, that to be able to say  
20      that you're affiliated with 3M is to be able to say that you  
21      can do what the other distributors and other brokers can't,  
22      which is that you can actually fulfill orders because  
23      there's no question that there's enormous demand in the  
24      marketplace. The question is who has access to these  
25      respirators, and virtually nobody does.

1           And so as procurement officials are besieged by  
2           this type of fraudulent activity, what 3M has found is the  
3           most important thing to protect against are people running  
4           around and saying that they are affiliated with 3M. To be  
5           sure, it hurts our brand and it hurts our reputation, but  
6           it's also a serious health risk out there in the world as  
7           people try to get respirators.

8           I think that the Court's analysis for the  
9           temporary retraining order was sound and it still holds  
10          here. It's the same standard and it's much of the same  
11          evidence. I will say that the evidence has only improved.  
12          We now have more information about the number of different  
13          commercial activities that Mr. Starsiak was engaged in. We  
14          now have more information about how he went out of his way  
15          to get the 3M attorneys and get them through the loop. We  
16          now have more information that he himself knew that using  
17          the Gates Foundation and other things to get into 3M was  
18          fraudulent. So we have more information about that,  
19          including a whole slew of commercial transactions, but  
20          really in the end the best to show, I think, that all of the  
21          *SquirtCo* factors that the Court looked at before are equally  
22          found here.

23          I do want to address just in the reply brief, I  
24          think there was a run at Star Brands Group as being the  
25          appropriate victim of a trademark case, or at least an

1 appropriate sort of target in terms of the confusion.

2 That's not supported by the law and if that were adopted by  
3 the Court, it would run a giant hole in trademark law.

4 The idea was that you would just lie and falsely  
5 affiliate with others, two intermediaries, and that was just  
6 fine and there's no cases that say that. And in fact the  
7 Hise transcript, that would be Exhibit 2 to the Hise  
8 declaration, is absolutely clear. Eldene Her (phonetic),  
9 she's on that call, she's working with Star Brands Group  
10 says, Look, we have the buyers double-stacked. But the  
11 buyers are asking us, Can you tell us or can you prove to us  
12 that what you have been telling us is true? You're  
13 affiliated with 3M. Can you give us some piece of evidence  
14 that substantiates this affiliation with 3M? And of course  
15 that's where they throw out Ivan Fong, that's where they  
16 throw out Haley Schaffer, and that's, I think, where this  
17 case gets appropriately brought in this particular venue.

18 So I don't think there's a serious contest on the  
19 *SquirtCo* factors. I don't think there's a serious contest  
20 on things like irreparable harm. And certainly the balance  
21 of the harms, given the fact that Mr. Starsiak says he's  
22 willing to stop doing this behavior, we're not familiar with  
23 what that harm could be to Mr. Starsiak.

24 I see their briefing as reflecting exactly what  
25 Mr. Schupp says, which is that Mr. Starsiak doesn't think he

1 did anything wrong. And you'll note there was -- in the  
2 Vaccaro declaration there was a bundle of letters of  
3 reference of people who were saying basically Mr. Starsiak  
4 was a good guy. Those include at least one of the people  
5 with whom he was engaging in what we think of as pretty  
6 fraudulent activity during this period of time. It's recent  
7 and otherwise. I think that the public interest is plainly  
8 served by making sure that this type of activity stops.

9 I guess my final comment will be this was referred  
10 to as a press, you know, release-based strategy or whatever.  
11 Deterrence is an important part of, of course, these  
12 lawsuits. There are thousands upon thousands of complaints  
13 that 3M has received and they have filed 18 lawsuits around  
14 the country trying to make sure that this stops.

15 It is, I think, unquestionably, in the views of  
16 law enforcement and others, a plague that is happening in a  
17 terrible time and that at least for procurements officials,  
18 interference with their ability to get important life-saving  
19 equipment. You know, I am a fan of vigorous advocacy and I  
20 believe that Mr. Schupp and Mr. Vaccaro have done an A-plus  
21 job with a pretty bad case. The last thing in the world,  
22 though, that anybody needs is a belief that somehow or  
23 another that what 3M is doing is interfering with the kind  
24 of buccaneering capitalism out there in the world as their  
25 papers suggest. This is about protecting access to



1 life-saving technology. It's about protecting 3M Brand from  
2 irreparable harm, and I don't see harm to Mr. Starsiak if  
3 this were entered.

4 Those are my comments unless the Court has  
5 questions.

6 THE COURT: Thank you, Mr. Ursu.

7 Mr. Schupp, you may respond.

8 MR. SCHUPP: Thank you, Your Honor. I'd like to  
9 talk about two issues, but first I just want to briefly  
10 mention Star Brands.

11 First, Star Brands, I don't think Mr. Ursu meant  
12 to characterize them as a victim in the sense that they  
13 entered into any transaction that didn't turn out for them.  
14 They immediately reported this to 3M, as they said, and made  
15 a fraud report. The problem is the report that 3M produced  
16 in this case is heavily redacted, ostensibly on a claim of  
17 privilege. And since this is short discovery on  
18 jurisdiction, we didn't have the opportunity to meet,  
19 confer, bring a motion to compel, and test the privilege  
20 claim they made. But I would just note that large sections  
21 of this fraud report we don't have available to us because  
22 they have been covered up by 3M.

23 Then with respect to this transcript with  
24 Mr. Starsiak, the transcript speaks for itself and I would  
25 ask the Court review it carefully because all of these

1 things that they represent as said in that conversation  
2 isn't in there. So Mr. Starsiak never said he was  
3 affiliated with 3M. When they asked him what his  
4 association is with 3M, whether he was a distributor, he  
5 said -- I'm not going to quote this quite right -- but he  
6 said, No, but we're in contact with distributors. He didn't  
7 represent that he was a distributor, and he just said that  
8 he was in contact with distributors. And he thought that  
9 they were. That Dupler and Redstone and Bionica and Kim  
10 Shafer had all told him that they were 3M distributors or in  
11 connection with distributors, and that's what he thought he  
12 was dealing with after his efforts to get distributor names  
13 from 3M from Mr. Motalebi failed.

14 So with respect to Star Brands, that's their only  
15 claim and they have to show that they have a likelihood of  
16 success on the merits as to Star Brands. And for the  
17 reasons we said in our brief, I don't think that they are  
18 going to succeed on the merits. They were not a consumer;  
19 they are sophisticated; the evidence of false affiliation is  
20 lacking; and there's no irreparable harm to 3M in this case.

21 I don't have anything to add other than what we  
22 said in our brief and I just don't think this is a case that  
23 warrants a preliminary injunction and I don't think this is  
24 a case that should stay in this Court. I think it should be  
25 dismissed for lack of personal jurisdiction and that should

1 be the end of it.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Schupp.

4 Mr. Ursu, you may respond.

5 MR. URSU: I'll just note that the work product  
6 that was redacted from Mr. Hise's fraud report is internal  
7 3M chatter around the report. It's not Mr. Hise's report.  
8 They have his report in the form that he gave it.

9 Mr. Hise is clear, again, there are multiple phone  
10 calls, of which he recorded the last one because he was  
11 afraid, and that in several of these phone calls that  
12 Mr. Starsiak referred to himself as a 3M distributor and  
13 that they were part of the 3M number one sales team. That's  
14 not recorded in that call. I want to be clear about that.  
15 But that is what he said and it's also in the fraud report  
16 saying that they were posing as 3M distributors. So  
17 that's -- I have not heard any contest that that's squarely  
18 in the bull's-eye that that is what the Lanham Act is trying  
19 to protect.

20 Mr. Schupp said that evidence of false affiliation  
21 is lacking. I would note that given that Mr. Hise was never  
22 deposed and that his declaration and his fraud report and  
23 that transcript are effectively uncontested, I would say  
24 that evidence of false affiliation is uncontested. There is  
25 no -- it's before the Court and there's plenty of good

1 reason, given the cluster of false affiliation that sort of  
2 follows Mr. Starsiak around, we believe he is falsely  
3 affiliating himself with 3M. He falsely affiliated himself  
4 with the Gates Foundation. He falsely affiliated himself  
5 with 5th Avenue. He falsely affiliated himself with the  
6 Dentens law firm, and at least in this environment, it's  
7 certainly not surprising that he falsely affiliated himself  
8 with 3M.

9 So we do think that what he did is wrong and we  
10 think that a court order is the way to make sure that it  
11 stops. Thank you. That's my response.

12 THE COURT: All right. I will take both motions  
13 under advisement.

14 Mr. Schupp, I would ask you, though, to talk to  
15 Mr. Starsiak to see whether it's necessary for me to rule on  
16 the preliminary injunction motion if I do determine that I  
17 have personal jurisdiction, but rather to get to discovery  
18 and he can defend his actions in the lawsuit. So if you  
19 could get back to me in the next ten days, I would  
20 appreciate it.

21 MR. SCHUPP: How would you like me to do that,  
22 Your Honor?

23 THE COURT: I think you could simply do it by  
24 sending the Court a letter.

25 MR. SCHUPP: Okay.

1 THE COURT: Okay?

2 MR. SCHUPP: Do you want me to copy the other side  
3 in on it or should I just send it to you?

4 THE COURT: Oh yes, of course. Copy the other  
5 side, yes, please.

6 Yes, Mr. Ursu.

7 MR. URSU: May I raise just a housekeeping matter?

8 THE COURT: Of course.

9 MR. URSU: I believe that the temporary  
10 restraining order that the Court entered expires on its  
11 terms today at this hearing. My sense is that while the  
12 Court has this matter under advisement, it would be  
13 appropriate to continue the status quo, so that would be our  
14 request.

15 THE COURT: Yes. I will continue the -- in fact,  
16 I'll make sure that an order goes out today continuing the  
17 temporary restraining order until the Court has an  
18 opportunity to rule.

19 MR. URSU: Thank you, Your Honor.

20 THE COURT: Very good. All right. Anything  
21 further, gentlemen? And Ms. Bundy, sorry.

22 MR. SCHUPP: No, Your Honor.

23 THE COURT: Court is adjourned.

24 MR. URSU: Thank you, Your Honor.

25 MR. SCHUPP: Thank you, Your Honor.

(Court adjourned at 3:57 p.m.)

\* \* \*

I, Carla R. Bebault, certify that the foregoing is  
a correct transcript from the record of proceedings in the  
above-entitled matter.

Certified by: s/Carla R. Bebault  
Carla Bebault, RMR, CRR, FCRR

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